

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**DATE:** March 7, 2013

**LEONARD DAVIS**  
**Judge Presiding**

Court Reporters: Shea Sloan  
Judy Werlinger

Law Clerk: Gabrielle LaHatte

Court Administrator: Rosa L Ferguson

**VIRNETX INC.**

**V**

**CISCO SYSTEMS, INC.**

**CIVIL ACTION NO: 6:10-CV-417  
JURY TRIAL – DAY 4**

**ATTORNEYS FOR PLAINTIFF**

**ATTORNEYS FOR DEFENDANTS**

**SEE SIGN-IN SHEETS**

On this day, came the parties by their attorneys and the following proceedings were had:

**OPEN:** 8:45 am

**ADJOURN:** 3:50 pm

<b>TIME:</b>	<b>MINUTES:</b>
8:45 am	Hearing outside presence of Jury.
	Mr. Cassady addressed the Court on admission of documents. Mr. Desmarais responded as to foundation of exhibits that Mr. Cassady mentioned on the record yesterday, but did not go into the foundation with the witness. (These are Plaintiff's Exhibits 41, 65 – 70, 84, 98, 271 – 274, 329 – 359, 366, 451, 510, 545, 572 – 574, 578 – 584, 630, 641, 643, 645, 714, 717 and 764 – 767.) Court will allow Mr. Weinstein back on the stand and asked Mr. Cassady to prove up foundation. Mr. Desmarais responded. Court asked parties to work it out at the break, if they can.
	Mr. Desmarais addressed the Court regarding the list of Exhibits tendered by Plaintiff yesterday and objects to certain exhibits that were not agreed to. Mr. Desmarais. Mr. Cassady responded.
	Court addressed the parties on the Court's procedure. Exhibits are as they are and are admitted. Mr. Cassady further responded.
	Mr. Bondor addressed the Court on cross-examination slide marked C2005 yesterday, and demonstrative used with Mr. Weinstein yesterday, marked as C2006 AND offered both, and without objection <b>Defendant's Demonstratives C2005 and C2006 admitted.</b>
9:00 am	Court asked for the Jury to be brought in.
	<b>Jury seated in the courtroom.</b>
	Mr. Cassady called <b>SCOTT FANNING</b> by video deposition. Mr. Cassady plans on

<b>TIME:</b>	<b>MINUTES:</b>
	playing several short depositions for a total time of 14 minutes. 12 minutes for plaintiff and 2 minutes for Defendant. Video played for the Jury.
	Mr. Cassady called <b>NERMEEN ISMAIL</b> by video deposition. Video played for the Jury.
	Mr. Cassady called <b>PARAM KUMARASAMY</b> by video deposition. Video played for the Jury.
	Mr. Cassady called <b>HOWARD RIDENOUR</b> by video deposition. Video played for the Jury.
	Mr. Cassady called <b>DANIEL BLACK</b> by video deposition. Video played for the Jury.
	Mr. Cassady called <b>VICTOR VOLPE</b> by video deposition. Video played for the Jury.
	Mr. Cassady asked to confer with opposing counsel. Pause in proceedings.
	Mr. Cassady offered Plaintiff VirnetX's Admitted Trial Exhibit List for March 7, 2013, marked as Plaintiff's Exhibit List #4, and without objection exhibits admitted. <b>Plaintiff's Admitted Exhibits: 1 – 6, 10 – 12, 16 – 18, 19, 21 - 24, 27, 29, 30, 32, 34, 36, 37, 40, 41, 46, 49, 51 – 53, 55 - 58, 60, 61, 62, 64 - 70, 73, 76, 83, 84, 89 - 92, 98, 99, 103, 107, 112, 121, 122, 124 – 129, 159, 165, 166, 174, 177, 186, 187, 191, 201, 213, 215 – 220, 223, 226 – 229, 234 – 244, 246, 247, 257, 263, 266, 268, 269, 271 - 275, 278 – 282, 292, 295, 297, 302, 305, 308, 309, 312 – 317, 320 – 323, 326, 329 - 360, 364, 366, 367, 378, 380, 381, 383 – 385, 387, 392 – 395, 416 – 419, 425, 426, 430, 437, 438, 444, 451 – 454, 456 – 458, 460, 461, 472, 474 - 479, 485 - 489, 491, 501 – 504, 506, 510, 538 – 540, 543, 545, 572 - 574, 578 – 583, 586, 597, 599, 601, 602, 618, 625 – 627, 629 - 633, 641, 643 - 645, 648, 650, 654, 668, 669, 671, 702 – 704, 714, 717, 722, 727, 732, 733, 740, 747, 752, 753, 755, 756, 758 – , 768, 778, 781.</b>
	Mr. Stadnick offered Defendant's List of Admitted Exhibits, March 7, 2013, marked as Defendant's Exhibit List # 3, and without objection, exhibits admitted. <b>Defendant's Admitted Exhibits: C1017, C1029, C1056, C1064, C1316, C1323, C1461, C1462, J106, J106A, J166, J181, J182, J185A, J187, J188, J189, J190, J191, J192, J195A, J254, J282.</b>
	Mr. Cassady addressed the Court and the <b>PLAINTIFF RESTS.</b>
	Court explained to the Jury that the Plaintiff has rested and Defendant will proceed with their case.
	Mr. Stadnick called <b>AMY PAQUETTE</b> to the witness stand. Witness sworn.
	Direct examination of Ms. Paquette by Mr. Stadnick.
	Mr. Stadnick passed the witness. Cross examination of Ms. Paquette by Mr. Cawley.
	Mr. Cawley passed the witness. Redirect examination of Ms. Paquette by Mr. Stadnick.
	Mr. Stadnick passed the witness.
	Court asked Jury to pass questions for this witness. No questions of this witness.
	Mr. Stadnick offered <b>Defendant's Demonstratives C2007 and C2008</b> , and without objection, exhibits admitted as demonstratives.
	Mr. Cawley offered the Sheet of Paper he created as <b>Plaintiff's Next Demonstrative</b> , and without objection, Plaintiff's Next Demonstrative admitted.
	Mr. Jones called <b>Dr. CULLEN JENNINGS</b> to the witness stand.
	Direct examination of Dr. Jennings by Mr. Jones.
10:20 am	Court in recess until 10:35.
10:35 am	Trial resumed. <b>Jury seated in the courtroom.</b>
	Direct examination of Dr. Jennings continued.

<b>TIME:</b>	<b>MINUTES:</b>
	Mr. Caldwell asked to approach bench. Bench Conference held.
	Direct examination of Dr. Jennings continued.
	Mr. Caldwell asked to approach the bench. Bench Conference held.
	Direct examination of Dr. Jennings continued.
	Mr. Jones passed the witness.
	Mr. Caldwell asked to approach bench. Bench Conference held.
	Cross examination of Dr. Jennings by Mr. Caldwell.
	Mr. Jones asked to approach bench. Bench conference held.
	Cross examination of Dr. Jennings continued.
12:08 PM	Court addressed the Jury and recessed them until 12:55 pm. Court addressed the Jury regarding illness and doctor's appointment. Court will finish at 3:45 today, to give time for Juror to get to doctor appointment.
	<b>Jury recessed for lunch.</b>
	Mr. Desmarais presented JMOLs on behalf of Cisco for claims not pursued at trial in the patents dropped and in the patents remaining in patents-in-suit VirnetX not pursuing; on all Cisco IP Phone products and related equipment for the '135 patent; on the '504 & '211 patent, the claims having executable code; on inducement for the '135 and '759 patents; on doctrine of equivalents; and on issue of validity in DJ counterclaims; on willful infringement; on liability issues. In the alternative, Mr. Desmarais requests a covenant from them that they be bound by jury's decision.
	Mr. Bondor moved for JMOL re damages.
	Mr. Curry responded as to JMOL on dropped claims and requests that the Court not grant JMOL on non-infringement, but then dismiss Cisco's DJ counterclaims as moot. Court will take those under advisement. In all other respects, JMOLs denied.
12:20 pm	Court in recess until 12:55 pm.
12:55 pm	<b>Hearing outside the presence of the jury.</b>
	Mr. Cassady addressed the Court on other patents regarding Dr. Becker and Dr. Clark's testimony. Mr. Bondor responded as to GP Factor #2. Mr. Cassady replied. Court addressed the parties and matter can be taken up on cross examination.
	<b>Jury seated in the courtroom.</b>
	Cross examination of Dr. Jennings by Mr. Caldwell continued.
	Mr. Caldwell passed the witness. Mr. Jones asked to approach the bench. (Bench Conference held). Redirect examination of Dr. Jennings by Mr. Jones.
	Mr. Jones passed the witness. Recross examination of Dr. Jennings.
	Mr. Caldwell passed the witness. Redirect examination of Dr. Jennings.
	Mr. Jones passed the witness. Recross examination of Dr. Jennings.
	Mr. Caldwell passed the witness. Redirect examination of Dr. Jennings.
	Mr. Jones passed the witness. Court asked for Jury to pass down their questions. No questions for this witness.
	Mr. Desmarais called <b>Dr. PAUL CLARK</b> to the witness stand. Witness previously sworn.
	Mr. Caldwell asked to approach bench. Bench Conference held.
	Direct examination of Dr. Clark continued.
	Mr. Caldwell asked to approach bench. Bench Conference held.
	Direct examination of Dr. Clark continued.

<b>TIME:</b>	<b>MINUTES:</b>
2:15 pm	Court in recess until 2:30.
2:30 pm	Trial resumed. <b>Jury not present in the courtroom.</b>
	Court asked parties to approach bench. Bench Conference held.
	Court asked for the Jury. <b>Jury seated in the courtroom.</b>
	Direct examination of Dr. Clark by Mr. Desmarais continued.
3:08 pm	Juror passed a note.
	Court addressed the Jury and will recess them for about 5 minutes.
	Court asked to see counsel at the bench. Bench conference held.
3:10 pm	Court in recess.
3:15 pm	Trial resumed. <b>Jury seated in the courtroom.</b>
	Direct examination of Dr. Clark by Mr. Desmarais continued.
3:45 pm	Court addressed the Jury and will recess them until 9:00 a.m. Monday. Court reminded the Jury of the Court's instructions.
	<b>Jury excused from the courtroom.</b>
	Court addressed the parties and gave them their time: Plaintiff has used 10:15 and Defendant has used 7:25.
3:50 pm	There being nothing further, Court adjourned for the day.